"Public Officer" is defined in the Interpretation Act, 1967. It means a person lawfully holding, acting in or exercising the functions of a public office. "Public office" means an office in any of the public services. "Public services" means the public services mentioned in article 132(1) of the Federal Constitution, that is, the armed forces, the judicial and legal service, the general public service of the Federation, the police force, the railway service, the joint public service mentioned in article 133, and the public service of each State.

By virtue of regulation 9 of the Essential (Trade Unions) Regulations, 1969, as enacted by P.U. (A) 408/69, section 27 was amended by adding to it a new subsection, *i.e.*, subsection (3). That came into force on October 9, 1969. I will reproduce subsection (3) as it is material for our present purpose:

"(3) (a) No person employed by a statutory authority shall join or be a member of, or be accepted as a member by any trade union unless the membership of that trade union is confined exclusively to persons employed by the particular statutory authority.

(b) Any trade union whose membership is confined to persons employed by a statutory authority shall not be affiliated to any other trade union or federation of trade unions whose membership is not otherwise so confined.

For the purpose of this subsection, the expression 'statutory authority' shall mean an authority or body established. appointed or constituted under a Federal or State law."

The legislature could have inserted the new subsection (3) as a separate section but they thought fit not to do so. Instead they inserted it as a subsection of section 27. The intention of the legislature can only be ascertained from the terms of the section itself. Therefore the whole of the section must be looked into, for every section of an enactment is a substantive enactment in itself. It is an elementary rule of construction of a statute that a section of a statute must be read literally unless one of two things occur; either there is some other section which cuts down its meaning or else the section itself is repugnant to the general purview of the Act: (see *Nuth* v. *Tamplin*[1]).

In other words it is certainly a right doctrine to apply that in the consideration of all Acts of Parliament, and that includes the construction of a subsection, that, unless there is compelling reason for it, words should not be imported into an Act of Parliament either by way of limitation or extension. Is there compelling reason which restricts the meaning and operation of subsection (3)? I think there is. Subsection (1) enacts that a public officer as popularly understood is restricted from being a member of a trade union. Subsection (3) was added so as to include employees who could not be catered under the class of "public officers" but nevertheless bear the same characteristics. In other words, section 27 as a whole prohibits public officers as popularly understood as well as employees of these public authorities which are outside the scope of "public services" as defined in the Constitution, *e.g.* M.A.R.A. from becoming members of trade unions. To put a literal construction on subsection (3) will be to construe the words "public officer" and "person employed by a statutory authority" in a different sense. That is not the intention of the legislature as can be ascertained from the terms of the whole section itself. The marginal note too, which reads "membership of public officers" is certainly of consequence in considering the general trend of the section as a whole.

Therefore the question in the summons must be answered by saying that the words "statutory authority" as enacted in section 27(3) of the Trade Unions Ordinance, 1959 do not include a company incorporated under the Companies Act, 1965.

Costs to respondent to be taxed.

Questions answered.

Solicitors: *Ng Ek Teong, Zain & Selvarajah; R. Ponnudurai.*

ANG SIEW HOCK & ORS. v. ANG CHOON KOAY

[O.C.J. (Raja Azlan Shah J.) April 21, 1970]

[Kuala Lumpur — Civil Suit No. 1510 of 1965]

Chinese Law and Custom — Family house — Use and enjoyment of — Interpretation of trust deed — Meaning of "children and descendants of deceased".

Wills and Trusts — Trust deed — Interpretation — Meaning of "children and descendants of deceased" — Family house — Use and enjoyment of.

This was an application for the interpretation of words and phrases used in a trust deed which provided that certain lands and premises were to be held "as to such premises situated on the said lands as were used by the said Ang Seng deceased in his lifetime as a family house, upon trust as a family house in accordance with Chinese custom for the enjoyment, use and occupation of the said Ann Chee and the children and descendants of the said Ang Seng deceased". The trust deed was prepared pursuant to an order of court to carry out the terms of the will of the deceased.

Held: (1) there was sufficient evidence in this case that the deceased intended that Chinese custom in respect of the use and enjoyment of the family house be followed;

(2) that according to Chinese custom the words "the children and descendants of the said Ang Seng deceased" must be construed to mean only the male issues and their descendants and only they are entitled to the use and enjoyment of the family house.

Case referred to:-

(1) *Re Tan Soh Sim deceased; Chan Lam Keong & Ors.* v. *Tan Saw Keow & Ors.* [1951] M.L.J. 21.

CIVIL SUIT.

K. L. Devaser for the plaintiffs.

T. Selvarasan for the defendants.

Raja Azlan Shah J.: I have been asked to interpret the words and phrases embodied in a trust deed. The relevant passages are as follows:

"1. In consideration of the premises, the trustees hereby declare that they hold the said lands as trustees upon the following terms:

(a) Upon trust until the expiration of twenty-one years from the death of the last surviving child of Ang Seng, deceased:

(i) As to such premises situated on the said lands as were used by the said Ang Seng now deceased, in his lifetime as his family house, upon trust as a family house in accordance with Chinese custom for the enjoyment, use and

occupation of the said Ann Chee and the children and descendants of the said Ang Seng deceased."

The plaintiffs are the grandsons of the said Ang Seng (hereinafter called the deceased). The defendant is the surviving son and trustee of the deceased. The other son of the deceased who was also the trustee of his estate, together with the defendant, was Ang Chew Mue (now deceased, the father of the first four plaintiffs).

In 1911, the deceased left a will appointing his wife, Ann Chee, as sole executrix of his estate. By virtue of the said will she was to receive during her lifetime all rents and profits from the said trust properties and after her death all the rents and profits were to be used in equal shares among the sons and daughters of the said deceased. The deceased, in his will, had also declared that the house (No. 13, Brickfields Road) be used as a family house in order that his name may be preserved and perpetuated and wherein prayers would be offered for his and his wife's names as is customary amongst Chinese. On Ann Chee's application the court, *vide* Civil Suit No. 71 of 1920, on the 18th of October 1927, ordered her to transfer the said trust properties to Ang Chew Mue (now deceased) and Ang Choon Koay, the defendant on trust, the terms of which were embodied in a trust deed which was approved by the court. We are only concerned with clause 1(a)(i) of the said trust deed which is reproduced above.

Mr. Devaser for the plaintiffs argued that the words and phrases used by the deceased can according to Chinese custom only mean those on the male side and their descendants; while those on the female side are excluded. Mr. Selvarasan on behalf of the defendant submitted that they include both the male and female issues and their descendants.

There are two issues in this case. The first is whether the deceased intended that the use and enjoyment of the said family house by his children and descendants be in accordance with Chinese custom, and secondly, if he did, under Chinese custom who are the issues and descendants entitled to its use and enjoyment.

To determine the intention of the deceased, it is necessary to refer to his will of 1911 to see whether there is evidence or words used to indicate that the deceased in fact intended that Chinese custom, in respect of the use and enjoyment of the family house, be followed. I find there is sufficient evidence of such intention in the words:

"I declare that my house No. 13, Brickfields Road shall be kept up and used as a family dwelling house in order that my name may be preserved and perpetuated and wherein prayers shall be offered for the names of my wife and myself as is customary amongst the Chinese. . ."

(page 1 of the will). I think the deceased had used these words in some special sense, that is, according to Chinese custom.

Having thus determined that the deceased intended that Chinese custom should be followed in respect of the use and enjoyment of the family house, it is necessary to determine who are the "descendants" entitled under such custom. Expert opinion regarding Chinese custom in respect of the property was given by Khor Pooi Kee (P.W. 1), a retired Chinese interpreter of the Supreme Court, Kuala Lumpur. His evidence was that "descendants of the deceased" mean male issues and unmarried female issues. The female issues are out if they are married, because from the date of marriage they take their husbands' names, and remain so until death. Their tombstones inscribe their names and the surnames of their husbands. Once they are married they do not have the right to live in the family house because they now belong to their husbands' families. He also testified that each Chinese clan has a birth register at the ancestral temple, and only the names of the male issues are registered. This is because they carry the family name. The daughters do not carry the family name once they are married.

This expert opinion is clearly in line with the judgment of Taylor J. in *Re Tan Soh Sim deceased; Chan Lam Keong & Ors.* v. *Tan Saw Keow & Ors.*[1] The relevant passages of the learned judge's judgment are found at pages 26-27. He said:

". . . Their whole system is based on the notion that the family, not the individual, is the unit for consideration. A person is either a member of the family or outside it. When a girl is married she leaves her father's house and goes to reside in the house of her husband's father or grandfather. Her first ceremonial duty is to worship at the family shrine and her second is to *kowtow* to her husband's parents and elders: then his juniors in the family *kowtow* to her. All this is symbolic of the fact that she has been married into the family and is expected never to leave it. If her husband should die, however young, his brothers will still maintain her for the rest of her life; provided always that she remains in the family house; if she was permitted to remarry she would not be allowed to take her children with her; they belong to the father's family and must be brought up to worship his ancestors. If she leaves the family, she leaves it completely and they have no further responsibilities towards her.

The custom affecting property conforms naturally to the family principle. All the sons inherit equally. The daughters do not inherit at all. A man is expected to provide presents and festal expenses on his daughter's marriage but nothing further. His duty is to provide for his daughters-in-law; they may bear grandsons to worship him; his own daughters cannot do so. To a Chinese man, a sister-in-law means a brother's wife, to whom he has responsibilities; his wife's sister is a person outside his family. To a Chinese woman, her husband's brother is a brother-in-law who has responsibilities towards her; her sister's husband is not. In China, said Hare, 'There is no inheritance through a female' (Chinese Family Law, 1904). This is because relationship is not traced through females, except for the limited purpose of considering eligibility for marriage. . .".

On the strength of this authority, I think the words "the children and descendants of the said Ang Seng, deceased" in clause 1(a)(i) of the trust deed stipulate that only the male issues and their descendants are entitled to the use and enjoyment of the family house. And there being no words to the contrary they hold equal shares. I therefore hold that the plaintiffs' claim succeeds. And being the trustee, the defendant is liable to submit a proper statement of account of all monies that had come into his hands ever since he took over the administration of the said trust properties.

Costs to be borne by estate.

Judgment for the plaintiffs.

Solicitors: *K. L. Devaser & Co.; T. Selvarasan.*